

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	
	)	
Cenex Harvest States	)	<b>NOTICE OF VIOLATION</b>
Cooperatives	)	
Mankato, Minnesota	)	<b>EPA-5-03-MN-06</b>
	)	
Proceedings Pursuant to	)	
Section 113(a)(1) of the	)	
Clean Air Act, 42 U.S.C.	)	
§ 7413(a)(1)	)	

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**NOTICE OF VIOLATION**

The United States Environmental Protection Agency (U.S. EPA) is issuing this Notice of Violation under Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). U.S. EPA finds that Cenex Harvest States Cooperatives (Cenex) is in violation of Prevention of Significant Deterioration (PSD) requirements in Part C of the Clean Air Act, 42 U.S.C. §§ 7470-7479 and 42 U.S.C. §§ 7491-7492, and the Minnesota State Implementation Plan (SIP) at its Mankato, Minnesota facility.

**Statutory and Regulatory Background**

1. Sections 160-169, in Part C of the Clean Air Act ("the Act"), 42 U.S.C. §§ 7470-7479, provides for the prevention of significant deterioration of air quality. Section 165 of the Act, 42 U.S.C. § 7475, sets forth preconstruction requirements for major emitting facilities.
2. Pursuant to Section 161 of the Act, 42 U.S.C. § 7471, each applicable implementation plan shall contain emission limitations and other measures needed to prevent the significant deterioration of air quality in any air quality region designated pursuant to Section 107 of the Act, 42 U.S.C. § 7407, as attainment or unclassifiable.
3. On August 7, 1980, and May 26, 1988, U.S. EPA incorporated the Prevention of Significant Deterioration of air quality ("PSD") rule, 40 C.F.R. § 52.21, into the federally enforceable SIP for the State of Minnesota. 40 C.F.R. § 52.1234, 45 Fed. Reg. 52741 (August 7, 1980), and 53 Fed. Reg. 18985 (May 26, 1988).

4. 40 C.F.R. § 52.21(j)(3) requires that [the owner or operator of any emission unit undertaking] a major modification shall apply best available control technology for each pollutant subject to regulation under the Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit. 40 C.F.R. § 52.21(r)(1) states that an owner who commences construction of a major modification of a major stationary source without applying for and receiving approval under the requirements of 40 C.F.R. § 52.21 shall be subject to appropriate enforcement action.
5. 40 C.F.R. § 52.21(b)(1)(i)(b) defines a "major stationary source" as any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act.
6. 40 C.F.R. § 52.21(b)(2)(i) defines a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.
7. 40 C.F.R. § 52.21(b)(3)(i) defines "Net emissions increase" as the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
8. In reference to ozone, significant net emissions increase means an emissions rate of 40 tons or more per year of volatile organic compounds (VOCs). 40 C.F.R. § 52.21(b)(23)(i).
9. An applicant for a permit to modify a stationary source is required to provide all relevant information to allow the permitting authority to perform an analysis or make the determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n).

SIP Permit Requirements

10. On May 13, 1988, U.S. EPA approved Minnesota permitting rules including 6 MCAR 4.4003 and 4.4005. 53 Fed. Reg. 17033.
11. On March 23, 1993, U.S. EPA approved amendments to the Minnesota SIP. The amendments included renumbering 6 MCAR 4.4003 and 4.4005 as Rules 7001.0030 and 7001.0050, respectively. 58 Fed. Reg. 15431.
12. Minnesota SIP Rule 7001.0030 prohibited any person from constructing, installing, modifying, or operating an emission unit without an air emission permit from the Minnesota Pollution Control Agency (MPCA).
13. Minnesota SIP Rule 7001.0050, required that applications from permits, required by 7001.0030, contain additional information determined by the commissioner of the MPCA to be relevant to a decision as to permit issuance, including but not limited to plans, specifications, or other technical information that is necessary to determine whether the facility will meet all applicable Minnesota and federal statutes and rules.
14. On May 24, 1995, U.S. EPA approved permitting rules including 7007.0150, 7007.0250, 7007.0500, and 7007.3000. 60 Fed. Reg. 27411. These rules became retroactively effective, with an effective date of August 10, 1993.
15. As of August 10, 1993, Minnesota SIP Rules 7007.0150 and 7007.0250, prohibit any person from constructing, installing, modifying, or operating an emission unit without an air emission permit from the Minnesota Pollution Control Agency (MPCA).
16. As of August 10, 1993, Minnesota SIP Rule 7007.0500, requires that, when applicable, permit applications contain all the requirements located at Minnesota SIP Rule 7007.3000.
17. As of August 10, 1993, Minnesota SIP Rule 7007.3000, incorporates all of the requirements at 40 CFR § 52.21, by reference.

**Cenex's Facility**

18. Cenex owns and operates a soybean processing facility at 2020 South Riverfront Drive in Mankato, Minnesota (the Cenex facility).
19. The Cenex facility has the potential to emit more than 250 tons of VOCs per year and has had the potential to emit more than 250 tons of VOCs per year since at least 1989.
20. In accordance with the definition at 40 C.F.R. § 52.21(b)(1)(i)(b), the Cenex facility is a major stationary source.
21. The Cenex facility is subject to the PSD regulations, incorporated by reference in the Minnesota SIP, and to the requirements to obtain PSD construction permits, and operating permits incorporating such PSD requirements, as required by the CAA and the Minnesota SIP rules.
22. The Cenex facility is located in Blue Earth County. Blue Earth County has been listed as attainment for ozone since March 3, 1978.

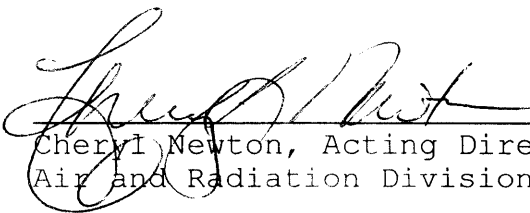
**Violations**

23. On September 16, 1992, Cenex applied for a permit from the MPCA to allow the installation and operation of a hot dehulling system and a new flour grinder.
24. In an enclosure to this application, Cenex explains that the installation of the new equipment will not increase the capacity of the plant because the plant is "bottlenecked" at a throughput capacity of 2,600 tons of soybeans per day.
25. On June 3, 1997, Cenex obtained a permit to modify its facility so that the overall soybean processing capacity of the plant could be increased from 3,200 tons per day to 4,200 tons per day.
26. At some point between September 16, 1992, and June 3, 1997, Cenex modified its plant so that the soybean throughput capacity at its plant was increased from 2,600 tons per day to 3,200 tons per day.
27. At no time between September 16, 1992, and June 3, 1997, did Cenex apply for or obtain a permit to modify its plant so that it could increase its soybean processing capacity from

2,600 tons per day to 3,200 tons per day.

28. Cenex's modification of its plant without first applying for and obtaining a permit from the MPCA is a violation of either Minnesota SIP Rule 7001.0030 or 7007.0150, depending on the date that Cenex began construction of the project.
29. The 600 ton per day increase in soybean throughput capacity at Cenex resulted in an increase in both the actual and potential VOC emissions at the facility of greater than 40 tons per year.
30. According to the definition at 40 C.F.R. § 52.21(b)(2)(i), the project referred to in paragraph 26 was a major modification at a major stationary source.
31. Cenex has not submitted an application for or obtained a permit meeting the PSD requirements set forth in 40 C.F.R. § 52.21 at any time.
32. Cenex has neither analyzed nor installed BACT for its soybean oil extraction plant.
33. Cenex's completion of a major modification at a major stationary source without first applying for and obtaining a permit meeting the PSD requirements, and undergoing PSD review, including BACT, in accordance with the Act, is a violation of the Minnesota SIP and 40 C.F.R. § 52.21.
34. Cenex has operated and continues to operate its Mankato, Minnesota facility without obtaining a PSD permit for the project listed in paragraph 26, violating the Minnesota SIP and 40 C.F.R. § 52.21. This violation began on the date that construction of the projects commenced and will continue until the appropriate permit is obtained and the necessary pollution control equipment is installed and operated.

1/15/03  
Date

  
Cheryl Newton, Acting Director  
Air and Radiation Division